IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Bhola Ram & Others Vs. State of Rajasthan & Others
(SB Civil Writ Petition No.3943/1999)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: November 21, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. V.S.Gurjar, for the petitioners.

Mr. G.L.Pareek] for respondents.
Mr. A.N.Sharma]
Mr. M.L.Goyal, Addl.Government Advocate for the State.

BY THE COURT:

Prayer of the petitioners, in the instant writ petition, is as under:-

(i) to declare that the petitioners are not liable to be dispossessed from the land in dispute and the judgments and decree dated July 4, 1990, February 20, 1999 and April 1, 1999 are not binding upon the petitioners and the respondent No.1 is not legally empower to dispossess the petitioners from land in dispute.

(ii) to quash the judgments and decree dated July 4, 1990, February 20, 1999 and April 1, 1999 and to dismiss the revenue suit No.67/64 filed by plaintiff respondents;

(iii) to restrain the respondents No.1 to 5 from interfering with the peaceful possession of petitioner in the land in dispute.

2. Contextual facts depict that the petitioners are legal representatives of late Shravan, Soni, Mangya who were defendants No.1,2 and 3 (for short `defendants') in revenue suit No.67/64 filed by plaintiff respondent Kishan Swaroop (predecessor of respondents No.6 to 10) in the court of Sub Divisional Officer Hindaun City on September 10, 1964. The suit was filed for recovery of possession and the ejectment of defendants No.1,2 and 3 from the land in question bearing khasra No.4577 measuring 15 biswas situated in Hindaun City. The suit was decreed vide judgment dated July 4, 1970. The appeal preferred by the petitioners came to be dismissed by Revenue Appellate Authority Sawai Madhopur vide judgment dated February 20, 1999. The second appeal preferred by petitioners before Board of Revenue was also dismissed vide judgment dated April 1, 1999. After dismissal of first and second appeal the petitioners assailed the finding of the courts below in the instant writ petition.

3. The only argument advanced on behalf of the petitioners is that the land in dispute was abadi land, therefore, the suit was not maintainable in Revenue Court. Reliance is placed on Srimohan @ Mohan Lal Joshi Vs. Sitaram Joshi [1997(2) WLC (Raj.) 28]. Per contra, learned counsel for plaintiff respondent raised preliminary objection in regard to maintainability of writ petition. It is canvassed that the defendant petitioners did not raise this point in the written statement that the land in dispute was Abadi land. Such argument for the first time in writ petition cannot be raised in view of the ratio indicated in C.Mackertich V. Steuart and Co.Ltd. (AIR 1970 SC 839).

4. I find force in the preliminary objection raised on behalf of the

respondents. The defendant nowhere pleaded in the written statement that the land in question was Abadi land. In C.Mackertich V. Steuart and Co.Ltd. (supra) their Lordships of the Supreme Court indicated that the point which was not raised in written statement cannot be allowed to be raised for the first time in writ petition.

5. Besides this, all the courts below have concurrently gave finding against the petitioners and no interference is called for under Article 227 of the constitution. In Sadhana Lodh Vs. National Insurance Co. Ltd. (2003)3 SCC 524, their Lordships of Supreme Court defined the supervisory jurisdiction of the High Court thus:-

> "The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

6. For these reasons, I do not find any merit in the writ petition and the same stands dismissed without any order as to costs.

(Shiv Kumar Sharma),J.

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